

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 26, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1161

Introduced by Senator Padilla

(Principal coauthor: Assembly Member Bradford)

(Coauthors: Senators Correa, Fuller, Lieu, Price, Rubio, and Strickland)

February 22, 2012

An act to add ~~Sections 239 and 710 to~~ *Section 239 to, and to add and repeal Section 710 of,* the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1161, as amended, Padilla. Communications: Voice over Internet Protocol and Internet Protocol enabled communications service.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined.

This bill would, *until January 1, 2020*, prohibit the commission from regulating Voice over Internet Protocol (VoIP) and Internet Protocol enabled service (IP enabled service), as defined, except as ~~authorized required or delegated~~ by federal law ~~and or~~ expressly provided otherwise in statute. The bill would prohibit any department, agency, commission, or political subdivision of the state from enacting, adopting, or enforcing any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates ~~or has the effect of regulating~~ VoIP or other IP enabled service, unless

~~authorized required or delegated~~ by federal law ~~and or~~ expressly authorized by statute. The bill would specify certain areas of law that are expressly applicable to VoIP and IP enabled service providers. The bill would provide that its limitations upon the commission's regulation of VoIP and IP enabled services do not affect the commission's existing authority over ~~traditional telephone service through a landline connection~~ *non-VoIP and other non-IP enabled wireline or wireless service* and ~~does~~ do not affect the enforcement of any state or federal criminal law or local ordinances of general applicability that apply to the conduct of business, *the California Environmental Quality Act, or a local utility user tax.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The continued vitality and success of California's technology
- 4 and innovation sector of the economy is dependent on a business
- 5 climate that supports the national and international nature of the
- 6 Internet.
- 7 (2) The Legislature is empowered to develop future state policy
- 8 and actions regarding Internet-based technology to further
- 9 innovation, consumer choice and protection, and economic benefits
- 10 to California.
- 11 (3) California's innovation economy is leading the state's
- 12 economic recovery. Silicon Valley alone added 42,000 jobs in
- 13 2011, an increase of 3.8 percent versus a national job growth rate
- 14 of 1.1 percent. The newly designated "app," for application,
- 15 economy has resulted in 466,000 new jobs nationwide, with 25
- 16 percent of that total created in California.
- 17 (4) The Internet and Internet Protocol-based (IP-based) services
- 18 have flourished to the benefit of all Californians under the current
- 19 regulatory structure. The success of the innovation economy is a
- 20 result of an open, competitive environment that has provided
- 21 California consumers and businesses with a wide array of choices,
- 22 services, and prices.
- 23 (5) California-based entrepreneurs and businesses are the global
- 24 leaders in IP-based services and technologies. These leading

1 technology companies, including content, services, and
2 infrastructure providers, represent some of the largest employers
3 in California, contributing billions of dollars of economic benefit
4 to the state.

5 (6) California consumers and businesses are driving the demand
6 for faster networks, new and innovative apps and software, and
7 continued innovation. As a result of this demand, network
8 infrastructure companies invested billions of dollars in California
9 in 2011. Internet voice communications connections are up over
10 22 percent, and entrepreneurs and innovators have launched close
11 to a million apps to meet consumer demand.

12 (7) The Internet and innovative IP-based services have the power
13 to address critical policy issues facing California and the nation
14 including new telemedicine initiatives to address health care access
15 and affordability, educational tools to improve opportunity and
16 success, IP-based energy solutions to promote conservation and
17 efficiency, and improved Internet access to support rural economic
18 development and sustainability.

19 (b) It is the intent of this act to reaffirm California's current
20 policy of regulating Internet-based services only as specified by
21 the Legislature and thereby achieve both of the following:

22 (1) Preserve the future of the Internet by encouraging continued
23 investment and technological advances and supporting continued
24 consumer choice and access to innovative services that benefit
25 California.

26 (2) Ensure a vibrant and competitive open Internet that allows
27 California's technology businesses to continue to flourish and
28 contribute to economic development throughout the state.

29 SEC. 2. Section 239 is added to the Public Utilities Code, to
30 read:

31 239. (a) (1) "Voice over Internet Protocol" or "VoIP" means
32 voice communications service that does all of the following:

33 ~~(1)~~

34 (A) Uses Internet Protocol or a successor protocol to enable
35 real-time, two-way voice communication that originates from or
36 terminates at the user's location in Internet Protocol or a successor
37 protocol.

38 ~~(2)~~

39 (B) Requires a broadband connection from the user's location.

40 ~~(3)~~

(C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(2) *A service that uses ordinary customer premises equipment with no enhanced functionality that originates and terminates on the public switched telephone network, undergoes no net protocol conversion, and provides no enhanced functionality to end users due to the provider's use of Internet Protocol technology is not a VoIP service.*

(b) "Internet Protocol enabled service" or "IP enabled service" means any service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

SEC. 3. Section 710 is added to the Public Utilities Code, to read:

710. (a) The commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as ~~authorized~~ *required or expressly delegated* by federal law ~~and or~~ expressly directed to do so by statute or as set forth in subdivision (c). *In the event of a requirement or a delegation referred to above, nothing in this section expands the commission's jurisdiction beyond existing state law.*

(b) No department, agency, commission, or political subdivision of the state shall enact, adopt, or enforce, ~~either directly or indirectly~~, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates ~~or has the effect of regulating~~ VoIP or other IP enabled service, unless ~~authorized~~ *required or expressly delegated* by federal law ~~and or~~ expressly authorized by statute or pursuant to subdivision (c). *In the event of a requirement or a delegation referred to above, nothing in this section expands the commission's jurisdiction beyond existing state law.*

(c) Nothing in this section affects or supersedes any of the following:

(1) The Emergency Telephone Users Surcharge Law (Part 20 (commencing with Section 41001) of Division 2 of the Revenue

1 and Taxation Code) and the state's universal service programs
2 (Section 285).

3 (2) The Digital Infrastructure and Video Competition Act of
4 2006 (Division 2.5 (commencing with Section 5800)) or a franchise
5 granted by a local franchising entity, as those terms are defined in
6 Section 5830.

7 (3) The commission's authority to implement and enforce
8 Sections 251 and 252 of the federal Communications Act of 1934,
9 as amended (47 U.S.C. Secs. 251 and 252).

10 (4) The commission's authority to require data and other
11 information pursuant to Section 716.

12 (5) The commission's authority to address or affect the
13 resolution of disputes regarding intercarrier compensation,
14 including for the exchange of traffic that originated, terminated,
15 or was translated at any point into Internet Protocol format.

16 (6) *The commission's authority to enforce existing requirements*
17 *regarding backup power systems established in Decision*
18 *10-01-026, adopted pursuant to Section 2892.1.*

19 (d) This section does not affect the enforcement of any state or
20 federal criminal or civil law or any local ordinances of general
21 applicability, including, but not limited to, consumer protection
22 and unfair or deceptive trade practice laws or ordinances, that
23 apply to the conduct of business, *the California Environmental*
24 *Quality Act (Division 13 (commencing with Section 21000) of the*
25 *Public Resources Code), and local utility user taxes.*

26 (e) This section does not affect any existing regulation of, or
27 existing commission authority over, ~~traditional telephone service~~
28 ~~through a landline connection~~ *non-VoIP and other non-IP enabled*
29 *wireline or wireless service*, including regulations governing
30 universal service and the offering of basic service and lifeline
31 service.

32 (f) *This section does not limit the commission's ability to monitor*
33 *and discuss VoIP services, including responding informally to*
34 *customer complaints.*

35 (g) *This section shall remain in effect only until January 1, 2020,*
36 *and as of that date is repealed, unless a later enacted statute, that*
37 *is enacted before January 1, 2020, deletes or extends that date.*